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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of:

Implementation of Sections of
the Cable Television Consumer
Protection and Competition Act
of 1992

Rate Regulation

MM Docket No. 92-266

To: The Commission

COMMENTS OF FANCH COMMUNICATIONS, INC.
AND MISSION CABLE CO., L.P.

Fanch Communications, Inc. ("Fanch") and Mission Cable Co., L.P. ("Mission") hereby submit their comments in this proceeding. Fanch and Mission are "independent" MSO's owning and/or operating numerous smaller cable systems throughout the United States. These comments are primarily responsive to the "Smaller System Burdens" section of the proposed rulemaking.

**I. The Cost-Revenue "Squeeze" on Smaller Systems
Requires Rate and Pricing Flexibility**

Smaller cable systems are caught between higher per subscriber costs and lower per subscriber revenues. This "squeeze" is due to the following factors:

A. Construction Costs of cable systems in rural areas are more expensive per home passed and per subscriber. This is primarily due to:

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1. Lower density of homes per cable mile. For example, if one mile of cable costs \$10,000 to build at 20 HPM, that is \$500 per home passed. At 60 HPM that is \$166.67 per home passed.
2. Fewer total homes to spread the cost of the headend equipment, towers, and other fixed costs for a system. The addition of one channel in a system with 500 subscribers costs about \$4.00 per subscriber. If the system has 25,000 subscribers, the cost is \$.08 per subscriber.
3. Higher tower requirements to allow reception of off air signals means up to \$125,000 must be spent for even a small number of subscribers. This would add \$250 per subscriber in a 500 subscriber system.

B. Operating Costs in small systems are higher per subscriber than in urban situations. This is due to:

1. Clustering of small systems is required to achieve a sufficient size to provide a full time job for one tech and one CSR. This means one office and one technician serve 3 to 5 towns usually separated by 5-25 miles each. This means higher costs to provide service (fuel, headend power, truck operating maintenance, long distance phone calls, etc.).

2. Usually rural electric companies are co-ops. Co-ops are unregulated as to pole rental charges. Often these rates are \$13-14.00 per pole per year, instead of the \$4.00-5.00 rates in regulated public utility companies. At 35 poles per mile and \$13.50 per year per pole for 12 subscribers per mile (60% penetration of 20 homes per mile) this cost is \$3.28 per subscriber per month. This compares with a typical regulated pole rental of \$4.50 per year over the same 35 poles and 12 subscribers per mile yielding only \$1.09 per subscriber per month. This difference of \$2.19 per month is solely due to ownership of the poles. The per subscriber per month differential becomes even greater when considering an urban environment where subscribers per mile can run as high as 60 or more. At 60, the pole rent operating cost differential would be \$3.06 per subscriber per month.
3. Programming costs are much higher in small systems, which are generally owned by small MSO's. Small MSO's are unable to secure the large discounts on programming received by large MSO's. This can amount to between \$1.25 to \$1.75 per month per basic subscriber in extra fees paid by the small operator. Small MSO's fill a need for

smaller communities because large MSO's often have no interest in owning and operating these systems.

4. A similar fee differential exists for pay services as well, with \$1.50 per pay unit per month being an expected difference.

C. Revenue Limitations: Rural, small systems have fewer revenue opportunities due to the significant cost per subscriber of any headend equipment required (discussed above). For such additional revenue sources as pay-per-view and advertising, the cost for the equipment in the headend is generally the same for a 50,000 subscriber system, a 10,000 subscriber system and a 1,000 subscriber system. Also the revenue potential is very small due to the small subscriber base.

II. The Commission's Rate Survey Did Not Address or Seek Data for Evaluation of Cost Aspects Critical to Smaller Systems

A. Value of Programming. No information was gathered about the cost, or value, of the satellite channels on the cable systems. In the survey ESPN, which costs about \$.55 per month, is equal in value to HSN, which pays its affiliates. Obviously, it is not feasible for a small system to add all the valuable (expensive) channels, let alone the less valuable (cheap) channels. Yet in the survey they each count as one satellite network with no greater value assigned to the better, higher cost channels.

B. Duplicate Signals. No information was collected to allow evaluation of duplicate off air signals (i.e., two ABC, NBC, etc.). What is the incremental value of a duplicate channel? Yet in the survey, even duplicate channels count as an "off air channel."

C. Community Specific Costs. Another area of concern, not evaluated by the survey, is why certain areas served by one headend may have higher rates than others. We do not address redlining for reasons of overbuild or prejudice, but there are real factors which impact costs - many are outlined herein. They are legitimate and should be considered in pricing practices. Several of these factors were mentioned previously, like pole rent per subscriber, and programming costs per subscriber.

Others not mentioned but equally important are construction costs per subscriber. For example, we built an underground area in the Rocky Mountains which no one else would build. Our basic rates in that area run \$5.00 per month higher than another aerial area served by the same headend. The local community appreciated this factor when it was built, and gave us a contract allowing these higher rates to pay back our investment. No reason exists for requiring us to forfeit this cost.

If, in fact, we must establish level pricing throughout a headend's service area, there should be a 3-4 year period for phase in, otherwise the cash flow needs of an operator may force lower prices up, rather than higher prices down. The subscribers

should not suffer, but neither should the prudent cable operator. It would seem that when defining "geographic area" it should take into account the nuances of the geographic areas, not just that it is the same franchising authority, or that it is served by the same headend. This is true also where different services are provided in different areas. Whether within the same franchise, or off the same headend, legitimate pricing distinctions should be allowed.

III. Smaller Systems Require Relief from Administrative Burdens

The following guidelines should be followed with respect to rate regulation of smaller systems:

A. Minimization of Administrative Burdens

Relief from the most burdensome administrative demands can be accomplished by:

1. Provide abbreviated forms.
2. Annual filing, preferably 60-90 days following the fiscal year end.
3. Apply this guideline to all systems under 1,000 subscribers.
4. Apply this guideline even if the system is owned by an MSO with up to 100,000 subscribers. (That's still too small to receive any programming discount.)

5. Do not require audited numbers (many small operations are not audited).

B. Exemptions from Rate Regulation Requirements

We believe that systems under 1,000 subscribers should be exempted from any substantive rate regulation since there is evidence that small systems tend to have much higher costs per subscriber due to the density of the homes, cost of programming without discounts, cost of headend equipment for so few subscribers and fewer opportunities for additional revenue.

Any rate regulation requirements imposed on small systems should:

1. Be general in nature so as to allow for unique operations costs and/or construction costs related to the system.
2. Presume the system is within compliance, when a complaint is lodged by the franchising authority.
3. Tailor all reporting to be minimal in nature and simple to complete.
4. Recognize that small systems have fewer revenue streams and that the remaining revenue streams (generally no ad insertions, PPV, fewer pay services, etc.) must sustain the business, therefore they must be generally higher.
5. We favor a system that tends to allow all smaller systems to recover their costs, in order to

prevent the disappearance of cable TV in small markets.

C. Avoidance of Cross-Subsidizations

Regardless of the size of the MSO, or the small operator, all costs associated with a specific cable system must be borne by that cable system. Otherwise the costs begin to be shifted to other systems which then subsidize the original system. This then becomes a way for certain subscribers to be required to pay for other subscribers' services, it distorts comparisons between systems and makes statistics and surveys meaningless and is unfair to the small, independent operator and the subscribers since MSO's could then keep rates in small systems artificially low. Thus, no attempt should be made to distinguish between owners of small systems, regardless of size. Comparison can be made with the copyright system which relies solely on revenue of each system.

D. Demand for Regulatory Expertise

All franchising authorities that desire to control rates locally should demonstrate that they have the knowledge, expertise and capability to perform this function. Further, the costs of this local regulation should not fall back on the cable operator but should be paid for from the franchise fee paid by the operator. The costs of an expensive process should not be a factor in rate control.

The FCC should provide guidelines for the municipalities which regulate the local operator and only rates falling outside the FCC guidelines should be questioned. This will prevent unnecessary, burdensome and costly processes being placed upon the small operator.

E. Minimization of Procedural Requirements
Related to Rates

Any filings required related to this area should be as a result of a complaint by a franchising authority. Upon complaint, information requested should be filed in the format available at the system to allow for variations in billing systems and record keeping methods.

IV. Conclusion

We must not forget that many towns in the U.S. only have cable television because small entrepreneurs risked their savings to build these systems. It was not the large MSO's which built, or now operate them. Usually the town fathers realized, up front, the economics discussed above. They agreed to higher rates "just so we can have cable TV." Now regulation could force out of business the very people who brought them cable. We have been "niche" players who provided a service to people who otherwise would not have had service made available to them. We do not believe it was the intent of Congress to harm or address these situations. We pray that much leeway be put in the regulatory guidelines to allow flexibility in instances outlined so we do not get hurt by generalizations that do not apply.

We operators of cable systems in small towns do not stand to lose just some percentage of our profit margin. Rather, we stand to lose our whole investment, and the communities we serve stand to lose quality of cable TV altogether if the factors outlined above, and many others, are not properly weighed and factored into the upcoming rate regulation guidelines.

Respectfully submitted,

FANCH COMMUNICATIONS, INC.
MISSION CABLE CO., L.P.

By: Dean Wandy
Vice President, Operations

January 27, 1993